Court No.3

Criminal Revision No. 46 of 2001
(Old No. 1207/1987)

Molak Ram ……. Revisionist.

Versus

State and another …….Respondent.s

Hon'ble Irshad Hussain, J.

Heard Sri Lokendra Dobhal learned counsel for the revisionist and learned A.G.A. for the respondents.

This is a criminal revision against the judgment and order dated 5-5-1987 passed by Sessions Judge Tehri Garhwal, whereby the appeal was allowed setting aside the order of conviction and sentence against the appellant, but the case was remanded to the learned Magistrate with the direction to give an opportunity to the prosecution to prove service of notice U/s 307 of the Municipalities Act, 1916 on the revisionist.

The learned Sessions Judge was of the view that the service of the notice was not proved by credible evidence and considering that the wrong-doer should not go un-punished for technical fault on the part of the prosecution, hence the case was directed to be remanded to the learned Magistrate for trial . It is not disputed that the notice U/s 307 of the Municipalities Act is a sine qua none before launching the prosecution against the wrong-doer for committing an offence U/s 185/307 of the Municipalities Act. When it was shown that there was no sufficient evidence to prove the service of the notice the consequence of the same was tht the prosecution could not have succeeded in establishing the allegation against the revisionist beyond doubt. In a situation like this the benefit should have been extended to the revisionist-accused and there was no justification to direct the remand and an opportunity to be given to the prosecution to prove the service of the notice. Considering the peculiar circumstances of the case the judgment and order of the learned Sessions Judge cannot be said to be just and proper and therefore there are legal reasons to interfere with the impugned judgment and order.

For the reasons mentioned above this revision is allowed. The judgment and order dated 5.5.1987 of the Sessions Judge Tehri Garhwal

is set aside and the conviction of the revisionist as recorded by the learned Magistrate per judgment and order dated 30-8-1986 is hereby set-aside. His bail bonds are cancelled and sureties discharged.

(Irshad Hussain, J.)

Dated 1-9-2003

ISB